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State of New Jersey
DEPARTMENT OF ENVIRONMENTAL PROTECTION
DIVISION OF HAZARDOUS WASTE MANAGEMENT

John J. Trela, Ph.D., Acting Director

CN 028

Trenton, N.J. 08625

609 - 292 - 1250

IN THE MATTER OF : ADMINISTRATIVE
DIAMOND SHAMROCK CHEMICALS COMPANY : CONSENT ORDER
ECRA CASE #'s 86334, 86335, 86336, 86337 :

The following FINDINGS are made and ORDER is issued pursuant to the authority vested in the Commissioner of the New Jersey Department of Environmental Protection (hereinafter "NJDEP") by N.J.S.A. 13:1D-1 et seq. and the Environmental Cleanup Responsibility Act, N.J.S.A. 13:1K-6 et seq., and duly delegated to the Assistant Director for Enforcement and Field Operations within the Division of Hazardous Waste Management pursuant to N.J.S.A. 13:1B-4.

FINDINGS

1. The Environmental Cleanup Responsibility Act, N.J.S.A. 13:1K-6 et seq. ("ECRA" or "the Act"), was signed into New Jersey State Law by Governor Thomas H. Kean on September 2, 1983, and took effect on December 31, 1983.
2. ECRA required the NJDEP to adopt rules and regulations to implement the Act. On March 6, 1984, NJDEP adopted the Interim ECRA Regulations, N.J.A.C. 7:1-3 ("Regulations") in compliance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., upon acceptance for filing by the Office of Administrative Law pursuant to N.J.A.C. 1:30-4.4(d).
3. ECRA requires that the owner or operator of an industrial establishment planning to sell or transfer operations (a) notify the NJDEP in writing within five (5) days of the execution of an agreement to sell pursuant to N.J.A.C. 7:1-3.7, (b) submit within sixty (60) days prior to transfer of title, a Negative Declaration or Cleanup Plan to the NJDEP for approval, and (c) obtain, upon approval of any necessary Cleanup Plan by the NJDEP, a surety bond or other financial security approved by the NJDEP guaranteeing performance of the Cleanup Plan in an amount equal to the cost estimate for the approved Cleanup Plan.
4. N.J.S.A. 13:1K-13 provides that failure to submit a Negative Declaration or Cleanup Plan pursuant to ECRA is grounds for voiding the sale by NJDEP. Any person who knowingly gives or causes to be given any false information or who fails to comply with the provisions of ECRA is liable for a penalty of not more than \$25,000.00 for each occurrence, and each day of a violation of a continuing nature constitutes an additional and separate offense. Furthermore, any officer or management official of an industrial establishment who knowingly directs or authorizes the violation of any provisions of the Act shall be personally liable for the \$25,000.00 penalties for each violation described above.

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5. Diamond Shamrock Chemicals Company, ("Diamond"), a Delaware corporation, owns and operates an industrial organic chemical manufacturing facility located at Berry Avenue and Route 17N, Carlstadt, Bergen County; said site being further known as Block 84, Lot 2 on the tax map of the Borough of Carlstadt ("Carlstadt facility"). Diamond has informed NJDEP that the Standard Industrial Classification (SIC) number which best describes the operations at the Carlstadt facility is 2869. Diamond has further informed NJDEP that hazardous substances as defined by the Regulations are used in the operations at the Carlstadt facility. The Carlstadt facility is an Industrial Establishment as defined by ECRA.
6. Diamond owns and operates an industrial organic chemical manufacturing facility located at Essex and First Street, Harrison, Hudson County; said site being further known as Block 71, Lot 1 on the tax map of the Township of Harrison ("Harrison facility"). Diamond has informed NJDEP that the SIC number which best describes the operations at the Harrison facility is 2869. Diamond has further informed NJDEP that hazardous substances as defined by the Regulations are used in the operations at the Harrison facility. The Harrison facility is an Industrial Establishment as defined by ECRA.
7. Diamond owns and operates an industrial inorganic chemical manufacturing facility located at 651 Tonnele Avenue, Jersey City, Hudson County; said site being further known as Block 980, Lots 1.A, and 9B-13B; and Block 981, Lots A.2, 1.A, 3, 13A, 15A and 35-39 on the tax map of Jersey City ("Jersey City facility"). Diamond has informed NJDEP that the SIC number which best describes the operations at the Jersey City facility is 2819. Diamond has further informed NJDEP that hazardous substances as defined by the Regulations are used in the operations at the Jersey City facility. The Jersey City facility is an Industrial Establishment as defined by ECRA.
8. Diamond owns and operates a research laboratory and administrative facility located at 350 Mt. Kemble Avenue, Morris, Morris County; said site being further known as Block 352, Lot 51 on the tax map of the Township of Morris ("Morris facility"). Diamond has informed NJDEP that the SIC number which best describes the operations at the Morris facility is 2869. Diamond has further informed NJDEP that hazardous substances as defined by the Regulations are used in the operations at the Morris facility. The Morris facility is an industrial establishment as defined by ECRA.
9. In May, 1986 a written letter of intent was entered into under which Oxy-Diamond Alkali Corporation ("Alkali"), a Delaware corporation and indirect subsidiary of Occidental Petroleum Corporation ("Occidental"), a Delaware corporation, would purchase Diamond's stock (hereinafter referred to as the "Transaction"). NJDEP and Diamond Shamrock expressly agree that the Transaction is subject to ECRA and the Regulations.
10. On May 14, 1986, Diamond submitted to NJDEP the General Information Submission ("GIS") portion of the Initial Notice as required by N.J.A.C. 7:1-3.7 for the Carlstadt facility, the Harrison facility, the Jersey City facility and the Morris facility. NJDEP reviewed each GIS and assigned the Carlstadt facility ECRA Case #86334, assigned the Harrison facility ECRA #86335, assigned the Jersey City facility ECRA Case #86336, and assigned the Morris facility ECRA Case #86337. In a letter dated May 19, 1986, NJDEP found each GIS to be incomplete.

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11. Due to the complex nature of the Transaction involving a stock transfer, Diamond has notified NJDEP that the Transaction must be consummated on or about September 1, 1986. Diamond has further informed NJDEP that Diamond cannot comply with all of the requirements of ECRA and the Regulations prior to September 1, 1986. Therefore, Diamond has requested that NJDEP prepare an Administrative Consent Order which, when effective, will allow the Transaction to be consummated prior to the completion of all administrative requirements.
12. In appropriate cases, NJDEP may allow transactions subject to ECRA to proceed prior to completing the standard ECRA administrative process by execution of an Administrative Consent Order. The Administrative Consent Order specifies a time schedule for completion of ECRA requirements by the industrial establishment and provides for financial assurance in a form and amount acceptable to NJDEP prior to consummation of any transactions subject to ECRA. Failure to fully comply with all the terms and conditions of the Administrative Consent Order shall subject the Ordered Party(ies) to the full range of penalties and remedies prescribed in the Act, the Regulations, and the Administrative Consent Order.

ORDER

NOW, THEREFORE, IT IS ORDERED AND AGREED THAT:

13. NJDEP and Diamond expressly agree that the terms and conditions of this Administrative Consent Order, including the financial assurance requirements, set forth in Paragraphs 14 and 15 below, shall apply separately to the Carlstadt, Harrison, Jersey City and Morris facilities (collectively called the "Diamond facilities"). Furthermore, NJDEP and Diamond agree to administer and complete all applicable ECRA program requirements, including exercise of the financial assurance requirements and any other remedial measures pursuant to the Administrative Consent Order and ECRA, separately for each subject Industrial Establishment.
14. ECRA Program Requirements for the Diamond Facilities
 - A. Diamond shall complete the Initial Notice for each subject Industrial Establishment required by N.J.A.C. 7:1-3.7 within thirty (30) days from the effective date of this Administrative Consent Order.
 - B. Within one hundred and twenty (120) days from receipt of NJDEP's written approval of the Sampling Plan(s) prepared for any of the Diamond facilities pursuant to N.J.A.C. 7:1-3.7(d)14 and N.J.A.C. 7:1-3.9, Diamond shall initiate, complete, and submit to NJDEP the results from any NJDEP-approved Sampling Plan(s) including, but not limited to, complete delineation of environmental contamination on-site, and any off-site environmental contamination resulting from discharges of hazardous wastes or substances on or from the Industrial Establishment which is subject of the approved Sampling Plan(s). NJDEP and Diamond recognize that additional sampling may be necessary during the various stages of the implementation of this Administrative Consent Order and ECRA, including during the implementation of a Cleanup Plan(s), at any of the subject Industrial Establishments to delineate fully the nature and extent of

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environmental contamination on-site, and any off-site environmental contamination resulting from discharges of hazardous substances or wastes on or from any subject Industrial Establishment. Therefore, Diamond agrees to submit any additional sampling plans for NJDEP review and approval required by NJDEP in writing during the various stages of the implementation of this Administrative Consent Order and ECRA, including during the implementation of a Cleanup Plan(s), to further delineate the nature and extent of environmental contamination on or from any of the subject Industrial Establishments. NJDEP and Diamond mutually agree that Diamond shall submit any additional sampling plans required to NJDEP for review and approval within thirty (30) days of the receipt of said written request. Within one hundred and twenty (120) days from receipt of NJDEP's written approval of any additional Sampling Plans(s), Diamond shall initiate, complete and submit to NJDEP the results from any additional NJDEP-approved Sampling Plan(s) required pursuant to this paragraph.

- C. NJDEP shall notify Diamond in writing requiring Diamond to submit either a Negative Declaration(s) or Cleanup Plan(s) when sampling results have satisfied NJDEP's requirement to delineate fully the nature and extent of environmental contamination on or from any subject Industrial Establishment. Diamond shall submit a Negative Declaration(s) or Cleanup Plan(s) within sixty (60) days from receipt of a written demand from NJDEP for a Negative Declaration(s) or Cleanup Plan(s). If a Cleanup Plan(s) is required, the Cleanup Plan(s) shall address remediation of any contamination identified on or from any subject Industrial Establishment in accordance with ECRA and the Regulations. Any Negative Declaration(s) or Cleanup Plan(s) submitted shall conform to N.J.S.A. 13:1K-6 et seq. and N.J.A.C. 7:1-3.
- D. Diamond shall implement any NJDEP-approved Cleanup Plan(s) in accordance with the approved time schedule or defer implementation of all or part of the Cleanup Plan subject to NJDEP approval pursuant to N.J.A.C. 7:1-3.14.
- E. Should NJDEP determine that any submittal made under Paragraph 14 of this Administrative Consent Order is inadequate or incomplete, then NJDEP shall provide Diamond with written notification of the deficiency(ies), and Diamond shall revise and resubmit the required information within a reasonable period of time not to exceed thirty (30) days from receipt of such notification.
- F. All submissions required pursuant to Paragraph 14 or any other provision of this Administrative Consent Order shall be accompanied by all appropriate fees required pursuant to the Fee Schedule for ECRA, N.J.A.C. 7:1-4.

15. Financial Assurance

- A. Diamond shall obtain and provide to NJDEP separate financial assurances in the form of a surety bond or letter of credit for each subject Industrial Establishment in the amounts specified as follows:

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Carlstadt facility - \$6,000,000.00
Harrison facility - \$2,000,000.00
Jersey City facility - \$2,000,000.00
Morris Facility - \$ 500,000.00

These financial assurances shall be provided to NJDEP prior to the execution of this Administrative Consent Order. The financial assurance must conform with the requirements of N.J.S.A. 13:1K-9(b)3, N.J.A.C. 7:1-3.10, N.J.A.C. 7:1-3.13, and this Administrative Consent Order.

- B. Diamond shall establish and submit to NJDEP for each subject Industrial Establishment separate standby trust funds within seven (7) days from the effective date of this Administrative Consent Order. The financial institution(s) which issues the financial assurance(s) shall agree to promptly and directly deposit all amounts up to the total value of the financial assurance(s) into the standby trust fund(s) upon demand by NJDEP.
- C. Upon NJDEP approval of a Cleanup Plan(s) for any subject Industrial Establishment(s), Diamond shall amend the amount of the financial assurance(s), described in A above for each of the Diamond facilities as the case may be, to equal the estimated cost of implementation of the approved Cleanup Plan(s), or shall provide such other financial assurance(s) as may be approved by NJDEP in an amount(s) equal to the estimated cost of implementation of the approved Cleanup Plan(s).
- D. In the event that NJDEP determines that Diamond has failed to perform any of its obligations under this Administrative Consent Order or ECRA at any of the Diamond facilities, NJDEP may draw on the financial assurance(s) for that subject Industrial Establishment(s); provided, however, that before any such demand is made, NJDEP shall notify Diamond in writing of the obligation(s) with which it has not complied, and Diamond shall have reasonable time, not to exceed fourteen (14) days, to perform such obligation(s) to NJDEP's satisfaction. Nothing in this paragraph shall prevent NJDEP from collecting stipulated penalties pursuant to the terms of this Administrative Consent Order for cause.
- E. Upon NJDEP's written approval of a Negative Declaration(s), Diamond shall be relieved of any further obligation to maintain in full force and effect the financial assurance(s) required by this Administrative Consent Order for the facility(ies) which is the subject of the NJDEP-approved Negative Declaration(s). Upon NJDEP's written approval of the completion of any cleanup(s) required by this Administrative Consent Order, as verified by final site inspection(s) pursuant to N.J.A.C. 7:1-3.12(e), and upon Diamond's satisfaction of all financial obligations in connection therewith, Diamond shall be relieved of any further obligation to maintain in full force and effect the financial assurance(s) required by this Administrative Consent Order for the facility(ies) at which the approved cleanup(s) has been completed. Upon NJDEP's written approval of a Negative Declaration or the completion of any cleanup required by this Administrative Consent Order as verified by a final site inspection pursuant to N.J.A.C. 7:1-3.12(e) at the Diamond facilities, Diamond's obligations under this Administrative Consent Order will be fulfilled.
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16. Additional Conditions of Consent

- A. Diamond shall allow NJDEP access to each subject Industrial Establishment for the purpose of undertaking all necessary monitoring and environmental cleanup activities. Prior to entry into this Administrative Consent Order, Diamond shall provide NJDEP with appropriate documentation that Occidental shall allow NJDEP the access required herein.
- B. Compliance with the terms of this Administrative Consent Order shall not excuse Diamond from obtaining and complying with any applicable federal and state permits, statutes, regulations and/or orders while carrying out the obligations imposed by ECRA through this Administrative Consent Order. The execution of this Administrative Consent Order shall not excuse Diamond from compliance with all other applicable environmental permits, statutes, regulations and/or orders and shall not preclude NJDEP from requiring that Diamond obtain and comply with any permits, and/or orders issued by NJDEP under the authority of the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., and the Spill Compensation and Control Act ("Spill Act") N.J.S.A. 58:10-23.11 et seq., for the matters covered herein. The terms and conditions of any such permit shall not be preempted by the terms and conditions of this Administrative Consent Order if the terms and conditions of any such permit are more stringent than the terms and conditions of this Administrative Consent Order. Should any of the measures to be taken by Diamond during the remediation of any ground water and surface water pollution result in a new or modified discharge as defined in the NJPDES regulations, N.J.A.C. 7:14A-1 et seq., then Diamond shall obtain a NJPDES permit or permit modification from NJDEP prior to commencement of said activity. Failure to comply with such other permits, statutes, regulations and orders, shall not be deemed a violation of this Administrative Consent Order.
- C. NJDEP agrees that it will not bring any action, nor will it recommend that the Attorney General's Office bring any action for failure to comply with (a) the time requirements in N.J.S.A. 13:1K-9(b)1 that NJDEP be notified within five (5) days of execution of an agreement to sell, and (b) the time requirement in N.J.S.A. 13:1K-9(b)2 that a Negative Declaration or Cleanup Plan be submitted sixty (60) days prior to transfer of title. NJDEP also agrees that it will not bring any action, nor will it recommend that the Attorney General bring any action seeking monetary penalties for Diamond's failure to meet the time requirements specified in (a) and (b) of this paragraph.
- D. No obligations imposed by this Administrative Consent Order (other than by paragraph "F" below) are intended to constitute a debt, claim, penalty or other civil action which could be limited or discharged in a bankruptcy proceeding. All obligations imposed by this Administrative Consent Order shall constitute continuing regulatory obligations imposed pursuant to the police power of the State of New Jersey, intended to protect the public health, safety and welfare.
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- E. The Administrative Consent Order imposes certain requirements and deadlines upon Diamond. Diamond agrees to use its best efforts to comply with said requirements and NJDEP agrees not to act unreasonably in the enforcement and implementation of this Administrative Consent Order.
- F. In the event that Diamond fails to comply with any of the provisions of this Administrative Consent Order, Diamond shall pay to NJDEP stipulated penalties in the amount of up to \$5,000.00 per day at the discretion of NJDEP for each subject Industrial Establishment for which Diamond fails to comply with any obligation under this Administrative Consent Order; provided, however, that no such stipulated penalty shall be payable by Diamond with respect to such period that said failure to comply results from Force Majeure.
- G. The provisions of this Administrative Consent Order shall be binding upon Diamond and its successors in interest, assigns, tenants, and any trustee in bankruptcy or receiver appointed pursuant to a proceeding in law or equity. Any officer or management official of Diamond who knowingly directs or authorizes the violation of any provision of ECRA or the Regulations shall be personally liable for the penalty established pursuant to N.J.S.A. 13:1K-13 and N.J.A.C. 7:1:-3.6(d).
- H. Diamond's failure to submit an approvable Negative Declaration(s) or Cleanup Plan(s) for any or all of the subject Industrial Establishments, as the case may be, shall constitute grounds for the NJDEP to void the subject sale or transfer of that facility(ies). NJDEP's right to void the subject sale or transfer shall terminate upon NJDEP's written approval of an appropriate Negative Declaration(s) or Cleanup Plan(s) for any or all of the subject Industrial Establishments, as the case may be, submitted by Diamond pursuant to this Administrative Consent Order and ECRA.
- I. Any submission to be made to NJDEP in accordance with this Administrative Consent Order shall be directed to:

Lance R. Miller, Chief
Bureau of Industrial Site Evaluation
Division of Waste Management
428 East State Street
Trenton, NJ 08608

17. Force Majeure

If any event occurs which purportedly causes or may cause delays in the achievement of any deadline contained in this Administrative Consent Order, Diamond shall notify NJDEP in writing within ten (10) days of the delay or anticipated delay, as appropriate, referencing this paragraph and describing the anticipated length, precise cause or causes, measures taken or to be taken and the time required to minimize the delay. Diamond shall adopt all necessary measures to prevent or minimize any delay. If any delay or anticipated delay has been or will be caused by fire, flood, storm, riot, strike or other circumstances determined by NJDEP to be beyond the control of Diamond, then the time for performance hereunder shall be extended by

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NJDEP for a period no longer than the delay resulting from such circumstances, provided that NJDEP may grant additional extensions for good cause. If the events causing such delay are not found by NJDEP to be beyond the control of Diamond, failure to comply with the provisions of the Administrative Consent Order shall constitute a breach of the Administrative Consent Order's requirements. The burden of proving that any delay is caused by circumstances beyond Diamond's control and the length of such delay attributable to those circumstances shall rest with Diamond. Increases in the costs or expenses incurred in fulfilling the requirements contained herein shall not be a basis for an extension of time. Similarly, delay in completing an interim requirement shall not automatically justify or excuse delay in the attainment of subsequent requirements.

18. Reservation of Rights

This Administrative Consent Order shall be fully enforceable in the New Jersey Superior Court having jurisdiction over the subject matter and signatory parties upon the filing of a summary action for compliance pursuant to ECRA. This Administrative Consent Order may be enforced in the same manner as an Administrative Order issued by NJDEP pursuant to other statutory authority and shall not preclude NJDEP from taking whatever action it deems appropriate to enforce the environmental protection laws of the State of New Jersey. It is expressly recognized by NJDEP and Diamond that nothing in this Administrative Consent Order shall be construed as a waiver by NJDEP of its rights with respect to enforcement of ECRA on bases other than those set forth in the ECRA Program Requirements section of this Administrative Consent Order or by Diamond of its right to seek review of any enforcement action as provided by the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. Furthermore, nothing in this Administrative Consent Order shall constitute a waiver of any statutory right of NJDEP to require Diamond to implement additional remedial measures should NJDEP determine that such measures are necessary to protect the public health, safety and welfare.

19. Diamond hereby consents to entry of this Administrative Consent Order and waives its right to a hearing concerning the terms hereof pursuant to N.J.S.A. 52:14B-1 et seq.

20. NJDEP and Diamond have entered into this Administrative Consent Order to ensure ECRA compliance and to allow the Transaction to be completed as quickly as possible. Diamond has executed this Administrative Consent Order without trial or adjudication of any issue of fact or law. Accordingly, neither Diamond's execution of this Administrative Consent Order nor Diamond's compliance with any of the provisions hereof, shall be deemed or construed to be an admission of liability at any time or for any purpose other than Diamond's liability to comply with the terms and conditions of this Administrative Consent Order.

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21. This Administrative Consent Order shall take effect upon the signature of all parties. Upon the signature of all parties, Diamond may complete the Transaction subject to the Administrative Consent Order.

NEW JERSEY DEPARTMENT OF
ENVIRONMENTAL PROTECTION

Date:

8/29/86

By:

John F. Dula, Director
Ronald Corcoran, Assistant
Director for Enforcement &
Field Operations

DIAMOND SHAMROCK CHEMICALS COMPANY

Date:

August 28, 1986

By:

Marcel J. Dumont
Name: Marcel J. Dumont
Title: Vice President

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